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 WESTERN DISTRICT OF WASHINGTON
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Attorney for Plaintiff
 Kathi Yeutsy



06-CV-00225-CMP

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

KATHI YEUTSY, a married woman,
 individually,

Plaintiff,

v.

DALE NIXDORF and JANE DOE NIXDORF,
 husband and wife and the marital community
 comprised thereof; and the CITY OF SEATTLE,
 a municipal corporation,

Defendants.

NO. **C06-0225 JLR**

COMPLAINT FOR
 PERSONAL INJURIES

COMES NOW plaintiff Kathi Yeutsy, by and through her undersigned counsel of
 record, Daniel P. Mallove, and for a claim of relief against defendants Dale Nixdorf, Jane
 Doe Nixdorf, and the City of Seattle, alleges as follows:

I. INTRODUCTION

This is a civil action seeking damages against the above-named defendants.
 Plaintiff's civil claims include common law tort causes of action, statutory causes of action,

802582 sum. ISS

1 and offenses committed under color of law resulting in a deprivation of rights secured by the
2 Constitution and laws of the United States of America.

3 **II. PARTIES**

4 2.1 Plaintiff Kathi Yeutsy, at all times material hereto, was a resident of
5 King County, Washington.

6 2.2 Upon information and belief, defendants Dale Nixdorf and Jane Doe Nixdorf,
7 at all times material hereto, were husband and wife, constituted a marital community, and
8 were residents of King County, Washington.

9 2.3 Defendant City of Seattle, at all times material hereto, was a municipal
10 corporation located in the King County, Washington. At all times material hereto, defendant
11 Dale Nixdorf was an employee of the City of Seattle Police Department and was acting
12 within the scope of his employment and under color of the laws of the State of Washington.

13 2.4 All acts material hereto occurred in King County, Washington.

14 **III. JURISDICTION AND VENUE**

15 3.1 This Court has personal and subject matter jurisdiction over plaintiff's federal
16 civil rights claims under Title 42, United States Code, § 1983 and Title 28, United States
17 Code, §§ 1331 and 1343(a)(3).

18 3.2 This Court has pendent jurisdiction over plaintiff's state law claims and over
19 defendants as to said claims, pursuant to Title 28, United States Code, § 1367.

20 3.3 The acts and omissions complained of herein occurred in King County,
21 Washington, and the defendants herein are residents and citizens of the State of Washington.

22 3.4 Venue is proper in this Court because the parties reside or transact business in
23 this District and all or a substantial portion of the acts and omissions giving rise to this
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25
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1 litigation occurred in this District.

2 3.5 Plaintiff has properly presented notices of claim to the City of Seattle alleging
3 claims against both the City of Seattle and defendant Dale Nixdorf, pursuant to RCW
4 4.96.020, and more than 60 days have elapsed since those claims were presented.

5 **IV. NATURE OF ACTION**

6
7 4.1 At approximately 9:00 p.m. on July 14, 2003, plaintiff Kathi Yeutsy
8 experienced a domestic dispute with her husband, Gary Yeutsy, and made a domestic
9 disturbance call to 9-1-1. The Seattle Police Department responded. Plaintiff Kathi Yeutsy
10 left the house after the police responded and stayed the night with her mother, Nadine Swan.

11 4.2 On July 15, 2003, at approximately 9:30 a.m., Seattle Police Department
12 Sergeant Elizabeth Eddie and two domestic violence advocates arrived at Nadine Swan's
13 house located in Seattle, Washington. Sergeant Eddie informed plaintiff Kathi Yeutsy that
14 she needed to file for a temporary protection order. Plaintiff Kathi Yeutsy then spent the
15 entire day in downtown Seattle on July 15th with the domestic violence advocates drafting,
16 revising and filing a motion for a temporary protective order. A temporary protective order
17 was issued at approximately 3:30 p.m. on July 15th. Sergeant Eddie subsequently drove
18 plaintiff Kathi Yeutsy in a Seattle Police Department vehicle to her mother's house and
19 dropped her off there, where plaintiff Kathi Yeutsy waited until news arrived that Gary
20 Yeutsy had been served and had vacated their residence in Seattle. Sergeant Eddie then
21 returned to Kathi Yeutsy's mother's house and told plaintiff Kathi Yeutsy that Gary Yeutsy
22 had been served.

23 4.3 Seattle Police Department Detective Dale Nixdorf also was assigned to Kathi
24 Yeutsy's mother's house while Gary Yeutsy was being served. Because Gary Yeutsy is a
25
26

1 former police officer and because of the Seattle Police Department's policies and procedures
2 related to domestic disputes involving former and/or current police officers, after Gary
3 Yeutsy was served, defendant Dale Nixdorf drove plaintiff Kathi Yeutsy in his police vehicle
4 to her residence in Seattle to install a Varda alarm system. Once inside plaintiff's home and
5 before installing the Varda alarm system, defendant Dale Nixdorf noticed that plaintiff Kathi
6 Yeutsy had a teddy bear on her bed. He then got on her bed spraddled and told plaintiff
7 Kathi Yeutsy he "could be [her] teddy bear." Plaintiff Kathi Yeutsy immediately told
8 defendant Dale Nixdorf that she was uncomfortable with his statement and with him lying on
9 her bed. Defendant Dale Nixdorf then got off the bed and installed the Varda equipment,
10 showed plaintiff Kathi Yeutsy how to use the equipment, and then drove her to her mother's
11 house where he also installed a Varda alarm system. Plaintiff Kathi Yeutsy's mother was
12 instructed by defendant Dale Nixdorf on how to use the equipment and instructed to
13 demonstrate her ability to use it. Defendant Dale Nixdorf then gave plaintiff Kathi Yeutsy
14 his personal cellular telephone number, his business card, drove her back to her own
15 residence, checked the house to make sure it was safe, and then left.

18 4.4 On or about July 20, 2003, at approximately 10:00 a.m., defendant Dale
19 Nixdorf called plaintiff Kathi Yeutsy stating to her that he needed to switch out the Varda
20 system he had previously installed to a panic system. He then arrived at her home a short
21 time later. Once he was inside plaintiff's home, defendant Dale Nixdorf laid his gun on
22 plaintiff Kathi Yeutsy's massage table and told her that she looked like she could use a hug.
23 Defendant Dale Nixdorf then hugged plaintiff Kathi Yeutsy. Defendant Dale Nixdorf then
24 installed the panic button on the Varda alarm system. When defendant Dale Nixdorf was
25 readying to leave plaintiff's residence, he again hugged her, and without plaintiff's consent
26

1 placed his hands on plaintiff's buttocks, pulled her towards him, rotated his groin against her,
 2 and kissed her on the neck. Plaintiff Kathi Yeutsy told defendant Dale Nixdorf that she was
 3 a married woman and was uncomfortable with his behavior. He then accused her being a
 4 tease and left the residence.

5
 6 4.5 Defendant Dale Nixdorf then went to a seminar in Florida for eight days, from
 7 which he placed no less than 11 telephone calls to plaintiff Kathi Yeutsy at her home, some
 8 of which were made at 5:00 a.m. Pacific Time.

9 4.6 Commencing on approximately July 25, 2003, and continuing through
 10 approximately August 11, 2003, defendant Dale Nixdorf continued to subject plaintiff Kathi
 11 Yeutsy to a series of sexually harassing comments, sexual innuendoes, unauthorized,
 12 impermissible, and unwelcome physical touchings, and sexual assault. Plaintiff Kathi Yeutsy
 13 consistently asked defendant Dale Nixdorf to stop making sexual comments and innuendoes,
 14 and to refrain from touching her breasts, buttocks, or other areas of her body. Despite
 15 plaintiff Kathi Yeutsy's requests, defendant Dale Nixdorf continued to engage in this
 16 unlawful conduct. Although defendant Dale Nixdorf always was in plainclothes, he always
 17 was armed with his police revolver on each occasion that he went to plaintiff's residence.
 18

19 4.7 On August 11, 2003, defendant Dale Nixdorf called plaintiff Kathi Yeutsy at
 20 5:45 a.m. claiming he needed to check the alarm system. He arrived at plaintiff Kathi
 21 Yeutsy's house at approximately 6:15 a.m. Defendant Dale Nixdorf entered plaintiff's house
 22 and sat on the couch. Plaintiff also sat on the couch a safe distance from defendant Dale
 23 Nixdorf and then defendant Dale Nixdorf went to plaintiff Kathi Yeutsy and put his arm
 24 around her and said, "Can't we go somewhere more comfortable?" Defendant Dale Nixdorf
 25 then attempted to kiss and fondle plaintiff and then grabbed her hand and placed it on his
 26

1 erect penis through his jeans. Plaintiff Kathi Yeutsy recoiled in fear and shock and went into
2 her bathroom. When she returned from the bathroom, she found defendant Dale Nixdorf
3 lying across her bed, naked, with his gun laid on a chair nearby. Plaintiff Kathi Yeutsy asked
4 defendant Dale Nixdorf to leave and reminded him that she was a married woman.
5 Defendant Dale Nixdorf then grabbed plaintiff by the hand, pulled her onto the bed, and told
6 her that he was a horny old man, and it's been awhile, and he just wanted to f-**-* her. He
7 then pulled off her shirt and, despite plaintiff's statements and attempts to resist, he fondled
8 plaintiff's breasts and attempted to grind his pelvis into plaintiff's pelvis. Plaintiff finally
9 convinced him to stop and defendant Dale Nixdorf then again called her a tease and left the
10 residence.
11

12 4.8 Later in the day on August 11, 2003, plaintiff Kathi Yeutsy called and
13 informed the Seattle Police Department that she no longer wanted the Varda alarm system or
14 the panic system in her house. Seattle Police Officer St. John and another woman officer,
15 whose name plaintiff Kathi Yeutsy does not know, arrived at her residence and removed the
16 Varda/panic button at approximately 1:00 p.m. on August 13, 2003. At that time, plaintiff
17 Kathi Yeutsy informed Officer St. John that she did not want defendant Dale Nixdorf in her
18 house anymore. Officer St. John asked plaintiff Kathi Yeutsy why, and she told Officer St.
19 John she would rather not talk about it. Officer St. John then informed plaintiff Kathi Yeutsy
20 that she needed to talk about it. Approximately five minutes after this conversation with
21 Officer St. John, Sergeant Eddie called plaintiff Kathi Yeutsy, at which time plaintiff told
22 Sergeant Eddie what she had experienced from defendant Dale Nixdorf.
23
24

25 4.9 Plaintiff Kathi Yeutsy filed a formal complaint with the City of Seattle Police
26 Department concerning the actions of Detective Dale Nixdorf and the Seattle Police

1 Department. The Seattle Police Department subsequently conducted an investigation into the
 2 complaint. On November 14, 2004, the Seattle Police Department Chief of Police R. Gil
 3 Kerlikowske wrote a letter to plaintiff Kathi Yeutsy stating as follows:

4 After a careful and objective analysis of all the information,
 5 the facts gathered in this case were conclusive. The King
 6 County Prosecutor's Office and the Seattle City Attorney
 7 reviewed the investigation. While the case did not rise to
 8 the level of criminal charges the evidence does indicate that
 9 the actions of the named employee were inappropriate. The
 10 evidence indicates that the named employee attempted to
 11 establish a personal and romantic relationship with you.
 12 The named employee knew you were a domestic violence
 13 victim when he installed a police alarm in your residence.
 14 Additionally, the named employee was in a position of
 public trust when he repeatedly called you and ultimately
 placed his personal desires before his professional
 obligations as a representative of the Seattle Police
 Department. The department sustained the allegations and
 proposed discipline. Prior to implementation of discipline,
 the named employee left the department.

15 A copy of this letter is attached hereto as Exhibit A.

16 4.10 The injuries and damages herein alleged are a direct and proximate result of
 17 the acts and/or omissions of defendants Dale Nixdorf and the City of Seattle.

18 4.11 As a proximate result of the acts and/or omissions of defendants Dale Nixdorf
 19 and the City of Seattle, plaintiff Kathi Yeutsy suffered personal injuries including, without
 20 limitation, bodily injuries, pain and suffering, emotional distress, property losses, damages
 21 from assault and battery, and damage to her reputation.
 22

23 **V. FIRST CAUSE OF ACTION:**
 24 **Violation of United States Constitution**
 and 42 U.S.C. §§ 1981 and 1983

25 5.1 Plaintiff realleges all paragraphs 1.1 to 4.4 as if fully and specifically set
 26 forth herein.

1 5.2 42 U.S.C. § 1983 provides, in relevant part, as follows:

2 Every person who, under color of any statute, ordinance,
3 regulation, custom, or usage, of any State or Territory . . .
4 subjects, or causes to be subjected, any citizen of the
5 United States or other person within the jurisdiction thereof
6 to the deprivation of any rights, privileges, or immunities
7 secured by the Constitution and laws, shall be liable to the
8 party injured in an action at law, suit in equity, or other
9 proper proceeding for redress . . .

10 5.3 Defendants Dale Nixdorf and the City of Seattle are "persons" within the
11 meaning of 42 U.S.C. § 1983.

12 5.4 Defendants Dale Nixdorf and the City of Seattle have deprived plaintiff of
13 rights, privileges or immunities secured by the Fourth and Fourteenth Amendments of the
14 United States Constitution by violating plaintiff's rights to bodily privacy and personal
15 security.

16 5.5 Defendants Dale Nixdorf and the City of Seattle have deprived plaintiff
17 Kathi Yeutsy of equal protection under the laws as guaranteed by the Fourteenth
18 Amendment to the United States Constitution.

19 5.6 The acts and omissions of defendants Dale Nixdorf and the City of Seattle
20 herein were done under color of state law, custom or usage.

21 5.7 The acts and omissions of defendants Dale Nixdorf and the City of Seattle
22 described herein proximately caused the deprivation of plaintiff Kathi Yeutsy's Fourth and
23 Fourteenth Amendment Rights.

24 5.8 As a direct and proximate results of the acts and/or omissions of defendants
25 Dale Nixdorf and the City of Seattle and the deprivation of plaintiff's Fourth and
26 Fourteenth Amendment constitutional rights, plaintiff Kathi Yeutsy suffered personal

1 injuries including but not limited to bodily injury, pain and suffering, emotional distress,
2 fear, anguish, property losses and other consequential damages in an amount to be
3 determined at the time of trial.

4 **VI. SECOND CAUSE OF ACTION**
5 **Assault and Battery**

6 6.1 Plaintiff realleges all paragraphs 1.1 to 5.8 as if fully and specifically set
7 forth herein.

8 6.2 As stated more fully above, defendant Dale Nixdorf unlawfully placed
9 plaintiff Kathi Yeutsy in reasonable apprehension of immediate physical harm and further
10 engaged in non-consensual and harmful touching of her person so as to constitute assault
11 and battery.

12 6.3 Defendant the City of Seattle is vicariously liable for the actions of its agent,
13 defendant Dale Nixdorf.

14 6.4 As a proximate result of the above-described acts of assault and battery,
15 plaintiff Kathi Yeutsy has suffered damages in an amount to be determined at the time of
16 trial.
17

18 **VII. THIRD CAUSE OF ACTION**
19 **Negligence**

20 7.1 Plaintiff Kathi Yeutsy realleges all paragraphs 1.1 to 6.4 as if fully and
21 specifically set forth herein.

22 7.2 Defendants Dale Nixdorf and the City of Seattle had a general affirmative
23 duty toward the public, and had a special affirmative duty toward plaintiff Kathi Yeutsy, to
24 refrain from causing injury to plaintiff Kathi Yeutsy, in accordance with the applicable
25 standard of care required of police and other law enforcement officers.
26

1 7.3 The acts and/or omissions of defendants Dale Nixdorf and the City of
2 Seattle constitute a breach of the duties of care owed to plaintiff Kathi Yeutsy and a breach
3 of fiduciary duties owed to plaintiff Kathi Yeutsy by violating her trust and confidence in
4 defendants as a public servant assigned to assist and protect her.

5 7.4 Defendant City of Seattle also was negligent in hiring defendant Dale
6 Nixdorf, in failing to adequately train defendant Dale Nixdorf, in failing to adequately
7 supervise defendant Dale Nixdorf, in allowing defendant Dale Nixdorf to engage in
8 inappropriate activities, and in allowing defendant Dale Nixdorf to engage in impermissible
9 and unlawful sexual harassment and assault.

10 7.5 As a direct and proximate result of the negligence of defendants Dale
11 Nixdorf and the City of Seattle as above-described, plaintiff Kathi Yeutsy has suffered
12 damages in an amount to be determined at the time of trial.

13 7.6 Defendant City of Seattle is liable for the actions of its agent and employee,
14 defendant Dale Nixdorf under the doctrine of *respondeat superior* and defendant City of
15 Seattle is liable for its own acts of negligence.

16 **VIII. SIXTH CAUSE OF ACTION**
17 **Negligent Infliction of Emotional Distress/Outrage**

18 8.1 Plaintiff realleges all paragraphs 1.1 to 7.6 as if fully and specifically set
19 forth herein.

20 8.2 As stated more fully above, the unlawful and inappropriate acts of
21 defendants Dale Nixdorf and the City of Seattle negligently inflicted emotional distress on
22 plaintiff Kathi Yeutsy.

23 8.3 The actions of defendants Dale Nixdorf and the City of Seattle constitute
24 negligent infliction of emotional distress or, alternatively, intentional infliction of
25 emotional distress.

1 emotional distress (outrage) on plaintiff Kathi Yeutsy.

2 8.4 Defendant the City of Seattle is vicariously liable for the actions of its agent,
3 defendant Dale Nixdorf.

4 8.5 As a proximate result of the above cited acts of infliction of emotional
5 distress, plaintiff Kathi Yeutsy has suffered damages in an amount to be determined at trial.
6

7 **IX. EXPENSES INCURRED**

8 9.1 As a further direct and proximate result of the acts and/or omissions of
9 defendants Dale Nixdorf and the City of Seattle, plaintiff Kathi Yeutsy has incurred and
10 will in the future incur reasonable and necessary expenses for physicians and medications,
11 as well as other care and treatment, all to her damage in an amount to be proven at the time
12 of trial.
13

14 9.2 As a further direct and proximate result of the acts and/or omissions of
15 defendants Dale Nixdorf and the City of Seattle, plaintiff Kathi Yeutsy has suffered, and
16 may suffer in the future, a loss of wages and impaired earning ability in an amount to be
17 proven at the time of trial.

18 9.3 As a further direct and proximate result of the acts and/or omissions of
19 defendants the City of Seattle and Dale Nixdorf, plaintiff Kathi Yeutsy has sustained
20 property losses in an amount to be proven at the time of trial.
21

22 WHEREFORE, plaintiff Kathi Yeutsy prays for judgment in her favor and against
23 defendants Dale Nixdorf and the City of Seattle, jointly and severally, granting the following
24 relief:

25 1. An award of compensatory damages in an amount to be determined at trial,
26 but no less than \$1,000,000.00;

1 2. An award of punitive damages in an amount sufficient to deter further
2 unlawful conduct by the defendants, in an amount to be determined at the time of trial, but
3 no less than \$1,000,000.00;

4 3. For an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

5 4. For such other relief as the Court deems just and proper.

6
7 DATED this 15 day of February, 2006.

8 LAW OFFICE OF DANIEL P. MALLOVE, PLLC

9
10 By: 

Daniel P. Mallove, WSBA #13158

11 Attorney for Plaintiff Kathi Yeutsy

EXHIBIT A



City of Seattle

Gregory J. Nichols, Mayor

Seattle Police Department

R. Gil Kerlikowske, Chief of Police

November 14, 2004

Mrs. Kathi Yeutsy
7902 California SW
Seattle, WA 98136

RE: IS-OPA File # 03-0174

Dear Mrs. Yeutsy:

The investigation into your complaint regarding the conduct of a Seattle Police Department employee has been completed. This has been a thorough and exhaustive examination of facts, and I appreciate your patience.

Your allegation that a Seattle Police employee misused his authority and acted in a manner that was unbecoming an officer received priority attention and was reviewed by our section command staff prior to being assigned for a comprehensive investigation. In this case, the facts gathered as a result of the investigation included the following:

- Related Incident Reports
- Joint Interview: Yeutsy
- Witness Statements: Officer and Sergeants (6)
- Statement: Accused employee
- Phone records: Yeutsy
- Phone records: SPD cell phone
- Washington State Crime Lab Report
- Varda Alarm Reports
- Photographs Yeutsy residence
- Download of named employee's personal data file
- KCSC Civil Court Documents: Yeutsy
- Alarm Installation Reports: 9 Survey Letter Recipients
- Newspaper Article

Once completed, this investigation was evaluated using the legal standard of proof of preponderance of evidence. This means that the evidence must show that, more likely than not, the employee's actions constitute misconduct.



Seattle Police Department, 610 Fifth Avenue, PO Box 34986, Seattle, WA 98124-4986

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Accommodations for people with disabilities provided upon request. Call (206) 253-7203 at least two weeks in advance.

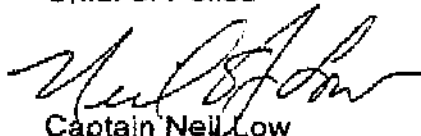
After a careful and objective analysis of all the information, the facts gathered in this case were conclusive. The King County Prosecutor's Office and the Seattle City Attorney reviewed the investigation. While the case did not rise to the level of criminal charges the evidence does indicate that the actions of the named employee were inappropriate. The evidence indicates that the named employee attempted to establish a personal and romantic relationship with you. The named employee knew you were a domestic violence victim when he installed a police alarm in your residence. Additionally, the named employee was in a position of public trust when he repeatedly called you and ultimately placed his personal desires before his professional obligations as a representative of the Seattle Police Department.

The department sustained the allegations and proposed discipline. Prior to implementation of discipline, the named employee left the department.

Thank you for bringing this matter to our attention. Public scrutiny is absolutely critical as we strive to build public trust and confidence and bring the best police services to our citizens. Should you have further questions or concerns, please contact Sergeant Parker of the Investigations Section at (206) 684-8797.

Sincerely,

R. Gil Kerlikowske
Chief of Police



Captain Neil Low
Investigation Section Commander
Office of Professional Accountability

NEL/MAP/tt

cc: Investigative file